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No.

IN THE

Supreme Court of the United States

HUGH T. BUTLER, SR.,

Petitioners,

v.

GREIF, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a plaintiff is limited to amending his EEOC charge to correct a technical defect by adding a missing verification only if the charge is still pending before the EEOC.

LIST OF PARTIES

The parties below are Petitioner, Hugh T. Butler, Sr. and Respondents, Greif, Inc. and Michael Ogilvie, Jr.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is currently available at 2009 WL 928916 (C.A.11 (Ga.)). The Eleventh Circuit affirmed the September 26, 2008 decision of the United States District Court for the Northern District of Georgia, which is not reported in the Federal Supplement. *See* Appendices A-B.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The Eleventh Circuit's opinion was entered April 8, 2009, no Petition for Rehearing was filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Excerpts from Title 42 United States Code, Section 2000e-5(b):

Enforcement provisions.

> (b) . . . Whenever a charge is filed by or on behalf of a person claiming to be aggrieved . . . alleging that an employer . . . has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge

> (including the date, place and circumstances of the alleged unlawful employment practice) on such employer . . .within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires.
>
> . . .

The provisions of 42 U.S.C. § 2000e-5 is lengthy and, therefore, set out in its entirety in Appendix C, pursuant to Supreme Court Rule 14.1(f). Relevant excerpts of the legislative history are set out in Appendix D, pursuant to Supreme Court Rule 14.1(h)(vi).

REGULATIONS INVOLVED

29 C.F.R. § 1601.9.

Form of charge.

Charge shall be in writing and signed and shall be verified.

Excerpts from 29 C.F.R. § 1601.12:

Contents of charge; amendment of charge.

(a) Each charge should contain the following:

. . .

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not be required to be redeferred.

STATEMENT OF THE CASE

1. Petitioner Hugh T. Butler, Sr. asserts in this case that he should not lose his statutory right to have his case determined on the merits because of the mere technicality of amending his EEOC charge after the expiration of the 90-day right to sue notice and the filing of his suit in district court.

2. Butler brings his present claim of retaliation based on Greif, Inc. terminating him on August 31,

2006, the day after his ADA jury trial ended in a Rule 50(a) motion.[1] Here the district court agrees with Greif that bending is not a "major life activity,"[2] preventing Butler from satisfying the first definition of disability.[3] Butler having worked for Greif since 1984, which included heavy lifting and repetitive bending of his back, his back injuries first appeared in 2001 at work, and because of a continuation of aggravation to his back, his doctor determines from a MRI a diagnosis of bulging disk and Degenerative Disk Disease in 2003. Upon learning of his chronic condition, Butler integrated his therapeutic exercises, safety practices, specially designed tools that he made in the shop, and other job aids provided by Greif to assist him with lifting of heavy equipment. By using these strategies, Butler performs his job without bending his back. Greif

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1. Plaintiff filed his initial action on November 30, 2004. Plaintiff's Complaint included six claims: disability discrimination and retaliation' under the Americans with Disabilities Act ("ADA"), constructive discharge under Title VII, negligent retention and/or supervision of employees under Georgia law, intentional infliction of emotional distress under Georgia law, and punitive damages.

2. Congress amended Title 42 U.S.C., Section 12102, and in its amendment, Congress revised the general definition of "major life activities," to include "bending" as a major life activity. 42 U.S.C.A. § 12102(2)(A).

3. However, according to the notes to the ADA Amendments Act of 2008, 42 USCA § 12101, Congress intended for the courts to give a broad interpretation of the statute, "Congress intended that the Act 'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage; . . ."

acknowledges its awareness of Butler's back injury and admits he continued to perform all of the essential functions of his job after his January 2003 FMLA leave until he went on vacation in August of 2004. The crux of the problem manifests itself in June of 2004 when Greif placed Butler on the relief roster to relieve press operators for lunch or break time. Butler, realizing that he could no longer endure the repetitive bending of his back as required for that position, he asks Greif to remove him from the roster, as there were adequate employees available already performing that task. Even though Greif admits that the press relief duty was a nonessential duty, it refused to relieve Butler of that duty. However, after Butler's doctor verifies a zero restriction on bending, Greif took the position that Butler is no longer able to perform the essential functions of his position as a machinist-electrician because "bending" is an essential job function. Despite Butler's demonstration during jury trial showing how he performed his essential duties without bending his back, the district court sided with Greif's unwritten declaration of "bending" as an essential function of the job. Hence, the district court grants the Rule 50(a) motion.

3. On or around February 22, 2007, Butler's counsel files a timely charge with the EEOC on his behalf. Butler alleges that on August 31, 2006, a day after jury trial ended, without giving him any opportunity to return to work from the leave of absence imposed by Greif, or otherwise giving any warning to Butler, Greif simply terminates him by

mail, allegedly pursuant to the terms of the collective bargaining agreement.

4. On May 22, 2007, the EEOC issues a Dismissal and Notice of Rights. In the Notice, the EEOC indicates that it is closing its file on Butler's charge by marking one of the generic boxes with each one representing one or more reasons. For Butler, EEOC checked the box that indicated a number of possible reasons, namely, for failure to provide information, for failure to appear or be available for interviews/conferences, or otherwise for failure to cooperate to the extent that it was not possible for EEOC to resolve the charge. Upon reviewing the Charge and the Right to Sue letter, Butler could see that the Charge itself consisted of background details explaining the basis of his dispute with Greif. For example, Butler presents the 2003 FMLA leave for his back injuries; the M.R.I. document showing his degenerative back condition; his doctor's therapeutic instructions; his work restrictions, including the "0" bending restriction; the break relief issue. Butler discuses the prior EEOC Charge No. 110-2004-04330; the prior lawsuit in the district court with case number; the three-day trial and its outcome; and his appeal to the Eleventh Circuit, Case No. 06-15274-BB. EEOC being only a computer link away from the district court's records and only about 90 days into its investigation duty, Butler concludes that the EEOC simply was not interested in investing any time into such a heavily litigated matter and decided to wash its hands of the case and let the parties continue with litigation in

district court. Instead of pursuing EEOC on its reasoning, Butler complies with the 90-day notice by timely filing his lawsuit in the district court. It is noteworthy to state that EEOC did not mention a lack of verification as a reason, which it could have done under option of "Other" on the dismissal and notice form.

5. Defendant chooses to wait until the summary judgment stage in the district court to raise the lack of verification as a defense to Butler's right to bring his claim in the district court.

6. On August 17, 2007, Butler filed the instant case against Greif and Ogilvie.

7. On March 13, 2008, Greif and Ogilvie file their motions for summary judgment. Butler is not complaining about the summary judgment granted to Ogilvie. Greif argues that the charge against Greif should be dismissed because Butler did not submit a verified charge to the EEOC.

8. On March 25, 2008, Butler's counsel filed an amended EEOC charge to add the missing verification. On April 7, 2008, Butler responded to Greif's motion for summary judgment, denying that he had not verified his EEOC charge and contending that on March 25, 2008, his counsel submitted to the EEOC an amended charge with the required verification, and that this amended charge relates back to the original date of filing.

9. Greif contends that Butler's amended EEOC charge cannot relate back to the date of original filing because Butler submitted it to the EEOC long after the EEOC closed its file and Butler received a right to sue notice.

10. On September 25, 2008, the district court Grants a summary judgment to Greif based on the Eleventh Circuit's holding in *Vason v. City of Montgomery, Alabama*, 240 F.3d 905, 907 (11th Cir.2001)(upholding grant of summary judgment where the plaintiff's EEOC charge was not under oath or affirmation and she never attempted to amend it to include the verification). Although Butler attempted to amend his charge, the district court discounts that effort by alluding to alleged prejudice to Greif because of the notation on the dismissal and notice of right to sue indicating EEOC was closing its file because Butler failed to provide information or cooperate with the EEOC to enable it to resolve the charge.

11. Petitioner filed his Notice of Appeal on October 24, 2008. The Eleventh Circuit's decision was entered on April 8, 2009. Petitioner now files his Writ of Certiorari to the U. S. Supreme Court, his final appeal.

REASONS FOR ALLOWANCE OF THE WRIT

REVIEW IS WARRANTED TO RESOLVE A CONFLICT CONCERNING EEOC 29 C.F.R. § 1601.12(b)

A. Application of 29 C.F.R. § 1601.12(b) To Correct Technical Defects

In the statute, 42 U.S.C. § 2000e-5(b), Congress omits a filing deadline for verifying charges. The statute makes no mention of any special circumstances such as amending the charge to add a missing verification. In carrying out its enforcement duties, the EEOC enacted a regulation that allows certain technical defects in charges to be corrected by amendment, including adding a missing verification. This Court in *Edelman v. Lynchburg College*, instructs that the verification requirement is a technical rather than substantive provision, more in the nature of the signature requirement under Federal Rule of Civil Procedure 11. 535 U.S. 106, 116, 112 S.Ct. 1145, 1151 (2002). However, the regulation, like the statute, contains no filing deadline to amending the charge to add this missing verification. This Court upholds the validity of the regulation, stating in *Edelman* that "We accordingly hold the EEOC's relation-back regulation to be an unassailable interpretation of § 706." 535 U.S. 106, 118, 112 S.Ct. 1145, 1152 (2002). Despite the broad language of the statute and the regulation, since this holding, lower courts have undertaken to find ways

to read in a filing deadline for amending the charge to add a missing verification. Apparently, Congress have been listening to the discourse among the courts and parties alike, for in September 2008, Congress passes an amendment to the Americans with Disabilities Act of 1990 ("ADA"). In one of the Congressional findings, Congress states that in passing the Act of 1990, "Congress intended that the Act 'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage." *See* Appendix D, at 36a. In January 2009, Congress passes *The Lilly Ledbetter Fair Pay Act of 2009*, to amend Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. It is important to note that in the Congressional Findings, Congress takes care to clarify what it is not intending, namely, that "With regard to any charge of discrimination under any law, nothing in this Act [The Lilly Ledbetter Fair Pay Act] is intended to preclude or limit an aggrieved person's right to introduce evidence of an unlawful employment practice that has occurred outside the time for filing a charge of discrimination." *See* Appendix D, at 35a. Butler asserts that after having been made aware over the years through various courts' decisions concerning the absence of a filing deadline in relation-back regulation, if Congress' original intent is to narrow the reach of the regulation, it could have taken the opportunity to

reiterate this intent when it amended Title VII and the ADA during 2008 and 2009. Instead, Congress reiterates its intent to provide broad coverage to ADA complainants. It seems reasonable to infer from Congress' recent actions that the EEOC relation-back regulation is doing just what Congress intends for it to do—allow complainants to correct technical defects whenever they are discovered, regardless of whether it occurs before or after the right to sue notice or after the filing of suit in court.

Despite this broad regulation, the Eleventh Circuit, along with others, is reluctant to give the regulation its full effect in circumstances where a plaintiff has failed to verify his EEOC charge before filing it with the EEOC and attempts to correct this technical defect after the right to sue notice and after filing suit in district court. The Eleventh Circuit's disregard for Congressional intent, to provide the ADA complainant broad coverage on the relation-back regulation, presents a substantial issue justifying Supreme Court review.

B. The Eleventh Circuit's Holding That Pending EEOC Charge Is Required To Correct Technical Defect Is An Impediment To Enforcing Congress' Intent to provide broad coverage Under ADA.

In this present petition, the Eleventh Circuit holds that a charge must be pending before the EEOC for an amendment to be valid. *Butler v. Greif,*

Inc., 2009 WL 928916, at *3 (11th Cir.(Ga.) Apr 08, 2009). The Fourth Circuit is in accord. *Balazs v. Liebenthal*, 32 F.3d 151, 156-58 (4th Cir.1994) (allowing EEOC charge to be amended and for amendment – verification – to relate back only so long as the charge is a viable one in the EEOC's files).

These circuits have seized upon dicta in this Court's opinion in *Edelman v. Lynchburg College*, 535 U.S. 106, 112 S.Ct. 1145 (2002), to imply a deadline for correcting technical defects, even though neither Congress nor the EEOC has done so. Specifically, in expounding upon the object of the verification requirement as offering protection to employers, this Court states, "This object, however, demands an oath only by the time the employer is obliged to respond to the charge, not at the time an employee files it with the EEOC." 535 U.S., at 113, 112 S.Ct. 1149. However, this is not the whole picture. This Court interlinks the completion of the oath requirement with the timing of EEOC's request to employers for a response to the charge, indicating that "the EEOC looks out for the employer's interest by refusing to call for any response to an otherwise sufficient complaint until the verification has been supplied," 535 U.S., at 115, 122 S.Ct. 1150. The EEOC gives its assurance to this Court that "The general practice of EEOC staff members is to prepare a formal charge of discrimination for the complainant to review and to verify, once the allegations have been clarified. 535 U.S., at 115, n.9, 122 S.Ct. 1150. However, EEOC's workload is

legendary and constantly challenges EEOC to complete its duties timely. In a memorandum to its staff, EEOC admits that there is still a problem with meeting its statutory duty of giving employers notice of charges within ten days, under both Title VII and the ADA. In response to this challenge, EEOC instructs its staff that

> if it appears that a perfected charge cannot be docketed and served within ten days of receipt of a correspondence meeting the minimal requirements of a charge, be it a letter or intake questionnaire, staff must take steps to promptly ascertain whether the submitter intended to initiate proceedings and, if so, docket the questionnaire or other correspondence as a charge and serve notice on the respondent within ten days of receipt. Intent can be inferred from a plain reading of the correspondence or determined by contacting the author/submitter. Staff should send respondent notice by mailing a Form 131 accompanied by the charge or by mailing only Form 131 (in situations where sending the charge 'would impede the law enforcement function of the Commission.'

See Petitioner's Appendix E, at 41a. In the present case, the record is not fully developed, since the

district court granted Greif's motion to stay discovery.

What the record does show is that in its dismissal and notice of rights to Butler, EEOC marks a block on the form indicating the following: "Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge." *See* Petitioner's Appendix F, at 44a. Here, there is no mention of the verification requirement in what is obviously a collection of conclusory options without any indication of which one is implicated. Another indication of the EEOC's workload challenge is that this dismissal and notice of rights is issued within ninety days of Butler filing his unverified charge. A review of the charge shows it is filled with details of the type required by 42 U.S.C. 2000e-5(b); for example, pertinent background facts concerning Butler's employment history; circumstances that led Butler to filing his first EEOC charge No. 110-2004-04330; identification of first suit in district court by Case No. 1:04-CV-3502-ODE and outcome of suit based on Greif's Rule 50(a) motion; the termination of Butler the next day after the Rule 50(a) judgment; and that Butler is appealing the summary judgment to the Eleventh Circuit, Case No. 06-15274-BB. Clearly, more than sufficient information is provided in the charge that it is difficult to understand why EEOC is feeling unable to launch and complete its investigation. Thanks to the Pacer Service, (that

provides on-line access to U.S. Appellate, District, and Bankruptcy court records and documents nationwide), EEOC is only a computer key away from additional detailed documents and can get them much quicker than a complainant trying to figure what it needs. Since access to additional information in Butler's the type of retaliation charge is a matter of court record, it is logical to conclude that the workload challenge impacted EEOC's decision to dismiss Butler's charge and issue right to sue notice. However, Greif, as any enterprising defendant would do, seizes an opportunity to build a defense and create an appearance of prejudice and both the district court and the appellate court accepted it without requiring any independent showing by defendant of prejudice. See Petitioner's Appendix F, at 46a-50a. Butler believes that for this Court to allow the Eleventh Circuit's position to stand would be simply opening a floodgate to employers lying in wait until in district court to launch this "protection of employers" defense.

C. The Eleventh And Fourth Circuits Conflict With Third Circuit's Holding Employer Can Waive Right To Use Absence Of Verification As Defense In Suit.

Contrary to the "pending before EEOC" line of cases, the Third Circuit, in *Buck v. Hampton Township School District*, allows a discrimination suit under the ADA to proceed where the plaintiff failed to verify her charge prior to suit. 452 F.3d 256

(3d. Cir. 2006). There the court finds that because the employer received a notice and copy of the unverified EEOC charge prior to the lawsuit and responded to it on the merits without raising the issue that it was unverified, the employer waived its right to assert in court plaintiff's failure to verify the charge as a bar to suit. *Id.* at 262.

D. The Eleventh And Fourth Circuits Conflict With Ninth Circuit's Holding Late Verification After Notice Of Right To Sue Not Prejudicial to Employer

Although not for the same reason as the Third Circuit, the Ninth Circuit is not in harmony with the Eleventh and Fourth circuits. In *McWilliams v. Latah Sanitation, Inc.*, the Court holds that a plaintiff should be allowed to file a late verification of his charge, even after the EEOC has issued a right to sue notice, because the employer received adequate notice of the charge and would not be prejudiced by the late verification. 149 Fed. Appx. 588, 590 (9th Cir. 2005). Butler's district court, and the Eleventh Circuit agrees, concludes that because the EEOC mark on its dismissal form the allegation of failure to cooperate (without indicating specifically which option or options it was referring to), that to allow Butler to verify the charge at this late stage would defeat the purposes of the verification requirement and would prejudice Greif. However, it is questionable whether the EEOC anticipated that employers would take this conclusory allegation

from its dismissal and notice of rights form and use it to get a plaintiff's case obliterated on a summary judgment motion. Butler believes this is true because in February of 2008, EEOC removed that dismissal reasoning, along with others, from the form, as is noted in a blank form in the appendix. It is doubtful that such reasoning would be valid under the statute. Specifically, 42 U.S.C. § 2000e-5(f)(1) provides that

> If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge by the person claiming to be aggrieved.

Here, Congress does not place any additional duty on EEOC to sort through reasons for dismissal or otherwise prioritize reasons for dismissal, but only

instructs the EEOC that if the charge is dismissed under subsection (b) and the Commission has not filed a suit, then give the complainant ninety days to file suit on its own behalf. Butler asserts this is partly why the EEOC removes that allegation of failure to cooperate from its form in February 2008, as it is inconsistent with the statute and its own regulation, in addition to removing possible temptation for EEOC to abuse the use of such allegation to reduce its caseload.

E. The Eleventh And Fourth Circuits Conflict With Seventh Circuit's Holding District Court Should Treat Omission Of Oath As A Permissive Waiver By the Commission.

In the final analysis, the Seventh Circuit's interpretation of the relation-back regulation harmonizes better with the statute. 42 U.S.C. § 2000e-5(b) provides that

> Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, alleging that an employer has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer within ten days, and shall make an investigation thereof. Charges shall be

> in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires.

In the language of the statute, the first two duties that Congress instructs the EEOC to perform after a charge is filed is to send out a *notice of the charge within ten days and make an investigation of the charge.* [emphasis added] Note, Congress does not say send out a notice of only a "verified" charge or investigate only a "verified" charge. The only direction given concerning the oath follows the first two duties. Here Congress states, "Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." There is no relationship between sending out the notice and beginning the investigation and the charge being under oath. At some point, Congress requires the EEOC to have the charge perfected with an oath or affirmation; since Congress does not designate that point in time, logically, Congress expects the EEOC to fill in the details. The EEOC follows with a regulation that allows technical defects to be corrected in the charge at any point in time by amendment. This regulation is in complete harmony with the statute and this Court confirms this position in *Edelman.* In view of recent amendments to Title VII and the ADA, Butler asserts that the statute does not necessarily require an interpretation that the oath is primarily for employers' protection. It is just as reasonable to interpret the oath for the benefit of the EEOC's

administrative process, to satisfy EEOC's state of mind that the charge is not frivolous before sending out the notice and launching its investigation.

However, because of years of experience, EEOC knows what to look for and if certain factual indicia are apparent in the charge, there is no need for EEOC to wait for verification before sending out the notice and launching its investigation—its state of mind is satisfied. After all, the parties know and EEOC knows that, for charges alleging egregious violations and substantial damages, the likelihood of a settlement is small and that the true battle is in district court, more precisely, the discovery process and the summary judgment motion. Therefore, the Seventh Circuit is correct that "the 'under oath' requirement relates to the administrative procedures which are conducted by the Commission and which precede any court action." *Choate v. Caterpillar Tractor Co.*, 402 F.2d 357, 359-360 (7th Cir. 1968). There is no need for the Commission to referee between employers' lawyers and complainants' lawyers because that is the function of the district court. In its Appellee's brief, Greif elaborated on how it felt compelled to maintain any possible defenses accruing from the omitted verification, to the extent that it did not reveal in district court what it received from EEOC or not. *See* Appendix F, at 56a-62a. However, from looking at the right to sue notice, it is evident that Greif's lawyer is copied and it can be inferred that earlier communication occurred between EEOC and Greif's lawyer. *See* Appendix F, at 43a-46a.

In the eyes of defense, it is all about winning not about assisting the EEOC to arrive at the truth and find a reasonable conciliation. It is interesting to note that there is no corresponding duty on the part of employers to place their position statements, that is, their responses to the charge, under oath. Where the protection for the employees to make sure EEOC is receiving the truth from employers so that employees do not have to incur the expense of litigating in district court to show pretext? After all, employees have far less financial resources to litigate, as employers often terminate them or force them to resign, and this is no small point lost on employers' lawyers. It is indeed a huge challenge for employees, financially and emotionally, to attempt to vindicate their Title VII and ADA rights against employers with well-oiled and finely tuned defense teams.

This is why Congress reiterated its intent in enacting the ADA is to "'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage." *See* Appendix D, at 36a. Congress in particular criticized this Court's holdings in two cases concerning the ADA matters, *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002). *Id.* at 37a. Congress even criticized the EEOC: "Congress finds that the current Equal Employment Opportunity Commission ADA

regulations defining the term 'substantially limits' as 'significantly restricted' are inconsistent with congressional intent, by expressing too high a standard." *Id.* at 37a-38a.

It is clear that Congress thoroughly reviewed pertinent statutes, including 42 U.S.C. § 2000e-5, and EEOC's regulations. If Congress had wanted to make any changes in the broad language concerning "oath and affirmation" or concerning the broad language of amending technical defects in 29 C.F.R. § 1601.12(b), it could have done so with the same clarity that it reiterated its intent concerning the ADA. Perhaps it is time for the courts to accept what Congress says by its broad language and what the Commission interprets by its broad regulation—technical defects including verifying a charge can be corrected at any time such defects are discovered, whether before the EEOC or not or in district court. In *Edelman*, when a respondent argues that the employer will be prejudiced because there would be no deadline for verifying a charge, this Court said, "But this is not our case," and now it is. 535 U.S., at 115, 112 S.Ct. 1150.

Thus, certiorari is warranted to resolve a split between the Eleventh Circuit and circuits of like mind, and the other circuits as to whether the relation-back doctrine afforded by 29 C.F.R. § 1601.12(b) may be limited to only those charges that are amended to add missing verification that are pending before the EEOC.

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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